

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Sprint PCS and AT&T	)	WT Docket No. 01-316
File Petitions for Declaratory Ruling	)	
On CMRS Access Charge Issues	)	

**REPLY COMMENTS OF NEXTEL PARTNERS, INC.**

Nextel Partners, Inc. (“Nextel Partners”), by its attorneys, hereby submits these reply comments in the above-captioned proceeding.<sup>1</sup> Based on the record, the Commission should expeditiously grant the declaratory ruling requested by Sprint PCS and make clear that commercial mobile radio services (“CMRS”) carriers have the right to recover termination access charges directly from interexchange carriers (“IXCs”).

The Commission should recognize that there is nothing in the Communications Act or the Commission’s regulations that prevent a CMRS carrier from recovering access charges directly from IXCs. None of the IXCs, including AT&T, seriously challenges this view. Rather, parties opposing Sprint PCS argue that as a matter of *policy* the Commission should mandate a “bill and keep” regime for IXC-CMRS termination. However, it is procedurally inappropriate for the Commission to adopt this new requirement in the current proceeding and outside of a rulemaking.

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<sup>1</sup> Sprint PCS and AT&T File Petitions for Declaratory Ruling On CMRS Access Charge Issues, *Public Notice*, DA 01-2618, WT Docket No. 01-316 (rel. Nov. 8, 2001).

Moreover, as the CMRS carriers that filed comments unanimously agree, the Commission should not mandate a “bill and keep” procedure for CMRS-IXC traffic as a matter of policy in any proceeding. Contrary to AT&T’s description of a “longstanding industry bill and keep compensation mechanism” the “bill and keep” mechanism was, in fact, the product of early technical limitations in the wireless industry which prevented CMRS carriers from distinguishing LEC traffic from IXC traffic and for determining which IXC was responsible for a call. The inequities of the bill and keep mechanism for IXC-CMRS traffic should not become law now that these technical limitations have been resolved.

Nextel Partners disagrees with those parties, including the Cellular Telecommunications & Internet Association (“CTIA”) that urge the Commission to mandate a “bill and keep” regime for both local telecommunications and long distance traffic. Unlike the exchange of local telecommunications traffic, there is no reciprocal traffic that CMRS and interexchange carriers exchange. In the case of local telecommunications traffic, where there are reciprocal obligations, a default “bill and keep” compensation structure can be effective in addressing unequal bargaining power between an ILEC and a CMRS carrier. However, for IXC-CMRS traffic, the CMRS carrier performs originating and terminating functions for the interexchange carrier with no reciprocal responsibility on the part of the IXC. In this situation, the CMRS carrier should have the right to be compensated directly from the IXC carrier through access charges if the CMRS carrier chooses to recover its costs in this manner.

An IXC who believes that a particular CMRS carrier’s access fees are excessive or unreasonable has remedies available. Each IXC has the right to utilize the Commission’s Section 208 complaint process if it believes that a CMRS carrier’s access charge is unreasonable.

In addition, IXC and CMRS carriers are free to negotiate alternative arrangements based on sound business decisions for each side.

In view of the foregoing, the Commission should expeditiously grant the declaratory ruling requested by Sprint PCS and rule that CMRS carriers have the right to recover termination access charges directly from IXCs.

Respectfully submitted,

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Dated: December 12, 2001

## **CERTIFICATE OF SERVICE**

I hereby certify that a true and complete photocopy of the foregoing "Comments" was served December 12, 2001 by U.S. Mail, first-class postage prepaid, on each of the following:

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